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## MONTANA CODE ANNOTATED — 2007

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# TITLE 45

## CRIMES

Ch.

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### CHAPTER 1

#### GENERAL PRELIMINARY PROVISIONS

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#### Part 1

##### Construction and Applicability

**45-1-101. Short title.** This title shall be known and may be cited as the "Criminal Code of 1973".

**History:** En. 94-1-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-101.

**45-1-102. General purposes and principles of construction.** (1) The general purposes of the provisions governing the definition of offenses are:

- (a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests;
- (b) to safeguard conduct that is without fault from condemnation as criminal;
- (c) to give fair warning of the nature of the conduct declared to constitute an offense;
- (d) to differentiate on reasonable grounds between serious and minor offenses.

(2) The rule of the common law that penal statutes are to be strictly construed has no application to this code. All its provisions are to be construed according to the fair import of their terms with a view to effect its object and to promote justice.

**History:** En. 94-1-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-102.

##### Cross-References

Reasons for punishing offenders, Art. II, sec. 28, Mont. Const.  
Criminal act and mental state, 45-2-103.  
Sentence and judgment, 46-18-101, 46-18-102.

**45-1-103. Application to offenses committed before and after enactment.** (1) The provisions of this code apply to any offense defined in this code and committed after January 1, 1974.

(2) Unless otherwise expressly provided or unless the context otherwise requires, the provisions of this title and Title 46 govern the construction of and punishment for any offense

No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by him or by a coconspirator.

(2) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

- (a) has not been prosecuted or convicted;
- (b) has been convicted of a different offense;
- (c) is not amenable to justice;
- (d) has been acquitted; or
- (e) lacked the capacity to commit the offense.

(3) A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

**History:** En. 94-4-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-102.

#### Cross-References

Admissibility of statements of coconspirator, Rule 801(d)(2)(E), M.R.Ev. (see Title 26, ch. 10).  
 Definition of acts, 45-2-101.  
 Definition of offense, 45-2-101.  
 Definition of purpose, 45-2-101.  
 Liability for acts committed by or for another, 45-2-301 through 45-2-312.  
 Charging two or more offenses as part of common plan, 46-11-404.

**45-4-103. Attempt.** (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, he does any act toward the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(4) A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he avoided the commission of the offense attempted by abandoning his criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

**History:** En. 94-4-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-103.

#### Cross-References

Definition of offense, 45-2-101.  
 Definition of purpose, 45-2-101.

## CHAPTER 5 OFFENSES AGAINST THE PERSON

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- 45-5-634. Parenting interference.
- 45-5-635 and 45-5-636 reserved.
- 45-5-637. Tobacco possession or consumption by persons under 18 years of age prohibited — unlawful attempt to purchase — penalties.

## Part 1 Homicide

### Part Cross-References

Family member of victim — reimbursement for mental health treatment, 53-9-128.

**45-5-101. Repealed.** Sec. 11, Ch. 610, L. 1987.

History: En. 94-5-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-101.

**45-5-102. Deliberate homicide.** (1) A person commits the offense of deliberate homicide if:

- (a) the person purposely or knowingly causes the death of another human being; or
- (b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, assault with a weapon, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, unless the person is less than 18 years of age at the time of the commission of the offense, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222.

History: En. 94-5-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 338, L. 1977; amd. Sec. 4, Ch. 584, L. 1977; R.C.M. 1947, 94-5-102; amd. Sec. 1, Ch. 322, L. 1979; amd. Sec. 1, Ch. 322, L. 1987; amd. Sec. 4, Ch. 610, L. 1987; amd. Sec. 2, Ch. 482, L. 1995; amd. Sec. 3, Ch. 432, L. 1999; amd. Sec. 3, Ch. 523, L. 1999.

### Cross-References

Definition of felony, 45-2-101.

Definition of knowingly, 45-2-101.

Definition of purposely, 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Burden of state in homicide trial, 45-5-111, 45-5-112.

Kidnapping, 45-5-301 through 45-5-304.

Robbery, 45-5-401.

Sexual intercourse without consent, 45-5-503.

Arson, 45-6-103.

Burglary, 45-6-204.

Escape, 45-7-306.

Limitation on deferred imposition of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

Killing of peace officer — aggravating circumstances, 46-18-303.

Protection of premature infants born alive, 50-20-108.

**45-5-103. Mitigated deliberate homicide.** (1) A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor's situation.

(2) Mitigated deliberate homicide is a lesser included offense of deliberate homicide as defined in 45-5-102(1)(a), but is not a lesser included offense of deliberate homicide as defined in 45-5-102(1)(b).

(3) Mitigating circumstances that reduce deliberate homicide to mitigated deliberate homicide are not an element of the reduced crime that the state is required to prove or an affirmative defense that the defendant is required to prove. Neither party has the burden of proof as to mitigating circumstances, but either party may present evidence of mitigation.

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

History: En. 94-5-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 5, Ch. 584, L. 1977; R.C.M. 1947, 94-5-103; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 5, Ch. 610, L. 1987; amd. Sec. 3, Ch. 482, L. 1995; amd. Sec. 1, Ch. 22, L. 2003.

### Cross-References

Deliberate homicide, 45-5-102.

Limitation on deferral or suspension of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.